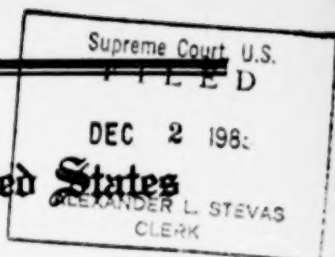


No. 83-320

IN THE  
**Supreme Court of the United States**

October Term, 1983



Anderson County, Tennessee  
and  
State Board Of Equalization Of Tennessee,  
*Petitioners,*

v.

United States Of America  
*Respondent.*

On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Sixth Circuit

**PETITIONER'S REPLY BRIEF**

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### **Opinions:**

**Memorandum - United States District Court for the Eastern District of Tennessee, Northern Division, November 8, 1983. Brief in Opposition, Appendix 1a-8a.**

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**PETITIONER'S REPLY BRIEF**

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The United States in its Brief in Opposition No. 83-320, (hereinafter referred to as Brief) attempts to lead this Court from the question presented in this case.

**Question In  
Petition For Writ**

Whether the Sixth Circuit properly reversed and remanded the district court's abstention and dismissal of a complaint by the United States alleging that a real property tax levied against its federal contractor was invalid on state and constitutional law grounds while the contractor, at the direction and with the financing of the United States, was contemporaneously litigating the validity of the tax on state law grounds in on-going proceedings in the state courts.

**Question In  
Brief Of The United States  
In Opposition**

Whether the court of appeals correctly held that the district court erred in dismissing the government's complaint on the basis of the abstention doctrine.

In contemporaneous lawsuits, the one in the federal court brought by the United States and the other in the state court brought by the federal contractor at the direction and with the financing of the United States, the real property tax assessed against the federal contractor is being contested. When a litigant, or litigants, while challenging the construction of a state statute contemporaneously files suit in federal court on issues involving that statute, the federal court should decide that the state statute must be definitively interpreted by the state courts before it can be applied in the federal suit. That the Sixth Circuit did not follow this course, but reversed the decision of the district court to abstain and dismiss, brings it into conflict with this Court's guidance in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976) and *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, \_\_\_\_ U.S. \_\_\_\_ 103 S. Ct. 927 (1983).

By litigating, or directing the litigation, of the real property taxation of its contractor in both the federal and state courts contemporaneously, the United States initiated a process creating conflict and confusion between the federal and state courts which the Sixth Circuit perpetuated by first reversing the district court's abstention and dismissal and then denying the petitioner's motion for a stay of mandate.<sup>1</sup>

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<sup>1</sup>The argument presented by the United States (Brief p. 9) that it is not a party to the ongoing proceedings in the state courts should be modified. "[P]ersons for whose benefit and at whose direction a cause of action is litigated cannot be said to be 'strangers to the cause'" *State of Montana v. United States*, 440 U.S. 147 at 154 (1979).

The attempt of the United States to shift the question of abstention to one of contract construction (Brief p. 7) should not mislead this Court, nor should their effort to remove state law issues from this case by contending that whether its contract conveyed any real property interest to its contractor does not "require an interpretation of state property laws" (Brief p. 10). That contention is inconsistent with *Reconstruction Finance Corporation v. Beaver County*, 328 U.S. 204 (1946) which requires a state law definition of "real property". See Pet. 19-21.

The Memorandum Opinion of the district court filed November 8, 1983 (Brief App. 1a-8a) confirms petitioner's position that the pivotal issue is one of unsettled state law. The district court agreed with petitioners that state law must define real property taxable interests. Compelled on remand to construe what is clearly an unsettled state law issue, the court determined that a court of general jurisdiction in Tennessee was in error in its construction of Tennessee law. (Brief App. 6a-8a).

This type of tension and confrontation between state and federal jurisdictions should have been avoided and should now be avoided. The error of the Sixth Circuit as challenged by petitioners has been confirmed.

The appropriate course of action on the suit filed in the district court February 12, 1982, by the United States was abstention and dismissal. The ruling of the Sixth Circuit reversing that decision has created an unwholesome precedent, which, if allowed to stand, would give the stamp of validity to tactics of litigating an issue piecemeal in the state and federal courts with all the attendant conflict, confusion and waste of judicial resources already apparent. The need for review is manifest.

## CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

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I hereby certify that three (3) copies of the foregoing Petitioners' Reply Brief was served this 1st day of December, 1983, by mail, postage prepaid, on:

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